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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,098	11/05/2003	Joel D. Martz	3070A	6812

7590

10/06/2005

David M Warren
655 Oakland Ave.
Cedarhurst, NY 11516

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/702,098

Applicant(s)

MARTZ, JOEL D.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-22 is/are rejected.
- 7) ☒ Claim(s) 12, 13 and 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5, 7, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 5, 7, and 11 are rejected as indefinite because it is unclear what the difference is between a water based adhesive emulsion and a latex emulsion since latex emulsions are also aqueous and function as adhesive backcoats in carpet applications.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 18-20 are rejected under 35 USC 102(a) as being anticipated by WO 01/98575 issued to Ellis et al.

Ellis discloses a carpet comprising a tufted primary backing, an adhesive backcoat, and a composite secondary backing (abstract). Said composite secondary backing comprises a breathable, liquid impermeable polymeric film adhered to a secondary substrate (abstract). Thus,

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Ellis teaches the features of claim 18, with the exception of an explicit teaching that the tufting layer and the primary backing layer are permeable to water vapor. However, the examiner asserts that the nature of a tufted primary backing inherently produces permeability. Since claims 18-20 do not exclude the presence of other layers in between said primary backing and the breathable membrane, claims 18-20 are anticipated by the Ellis reference.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 6, 14, and 15-17 are rejected under 35 USC 103(a) as being unpatentable over WO 01/98575 issued to Ellis et al. in view of US 5,612,113 issued to Irwin, Sr.

As noted above, Ellis discloses a carpet comprising a tufted primary backing, an adhesive backcoat, and a composite secondary backing (abstract). Said composite secondary backing comprises a breathable, liquid impermeable polymeric film adhered to a secondary substrate (abstract). The secondary substrate may be made of natural or synthetic fibers (page 13, line 23, page 16, lines 1-4, and page 19, lines 16-17).

Thus, Ellis teaches the invention of claims 1, 6, 14, and 15 with the exception that the breathable membrane is located between the primary backing and the secondary backing. While Ellis teaches said breathable layer is on the underside of the secondary backing, it would have been readily obvious to one skilled in the art to locate said breathable backing in between the

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primary backing and secondary backing. Note Irwin which teaches a carpet having a liquid impervious backing located either on the rear side of the primary backing (i.e., in between the primary and secondary backings) or on the rear side of the secondary backing (i.e., as taught by Ellis) (abstract). Thus, it would have been readily obvious to one skilled in the art to modify the location of the breathable, liquid impervious backing of Ellis to be in between the primary and secondary backings since Irwin teaches either location is effective in providing a barrier layer. Therefore, claims 1, 6, 14, and 15 are rejected.

Regarding claim 16, Ellis fails to teach foam or cushion secondary backings. However, as taught by Irwin, said secondary backings are well known in the art. Specifically, Irwin teaches foam cushion backings may be substituted for woven secondary backings. Therefore, it would have been obvious to substitute the secondary backing of Ellis with a foam cushion as taught by Irwin.

Regarding claim 17, while the prior art does not explicitly teach the MVTR of the breathable layer, it is argued that this property is met by Ellis's teaching of a breathable layer. Like materials cannot have mutually exclusive properties. Therefore, claim 17 is also rejected.

8. Claims 2-4, 8-10, 16, 21, and 22 are rejected under 35 USC 103(a) as being unpatentable over the cited Ellis and Irwin references and in further view of US 2002/0142126 issued to Higgins et al.

Ellis and Irwin fail to teach a stabilizing layer. However, said layers are well known in the art of carpets. For example, Higgins teaches a fiberglass stabilizing material located between the primary backing and the secondary backing and bonded thereto by an adhesive (abstract). The stabilizing layer is preferably a fiberglass nonwoven material, but may also be a scrim or

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woven material (section [0176]). Therefore, it would have been readily obvious to one skilled in the art to employ a stabilizing layer, such as that known in the art and evidenced by Higgins, in the carpet of Ellis in order to impart dimensional stability to the carpet. Hence, claims 2-4, 8-10, 21, and 22 are rejected.

Allowable Subject Matter

9. Claims 12, 13, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Said claims contain allowable subject matter because the cited prior art does not teach or suggest the claimed carpet structure including a secondary backing comprising an apertured film.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA
PRIMARY EXAMINER

cj

October 3, 2005